

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 402 of 1997

with

CRIMINAL REVISION APPLICATION No 403 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHHATRASINGH NATHUSINGH VAGHELA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 402 of 1997
MR KIRIT R RAVAL for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1
MR PC KAVINA for Respondent No. 2
2. Criminal Revision Application No 403 of 1997
MR KIRIT R RAVAL for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1
MR PC KAVINA for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 20/10/97

ORAL JUDGEMENT

Chhatrasingh Nathusingh Vaghela- the original accused in Cri. Case No. 48 of 1989 has filed them present revision applicant against the order of conviction and sentence passed by the learned Addl.Chief Judicial Magistrate in Cri. Case No. 48 of 1989 under Section 630 of the Companies Act on 13.6.97.

2. The respondent no.2 filed this private complaint under section 630 of the Companies Act against the present revision applicant on the allegation that though he retired on 31.3.86 he did not hand over the possession of the premises allotted to him in lieu of his employment though he was called upon to do so by a notice. The revision applicant had contended that the premises in question were not given to him in lieu of his employment. He was initially paying rent and subsequently the House Rent Allowance (HRA) which he was entitled to get as per the terms and condition of the settlement was also not being paid to him. It is his contention that the real relationship between the complainant and himself is that of landlord and tenant and that the company had already filed a suit under the Bombay Rent Act in the year 1987 and that this false case was lodged against him, in order to pressurise him.

3. In order to prove its case against the revision applicant the respondent no.2 original complainant had examined himself and he had examined one more witness in support of his claim. He had also produced documents to prove his case against the present revision applicant. As against this the revision applicant had not examined any witness in support of his defence but had produced certain documents.

4. The learned Magistrate found that the version put up by the present revision applicant was not acceptable and that the complainant had proved his case against the revision applicant beyond reasonable doubt. He therefore, held him guilty under section 630(1) and sentenced him to pay a fine of Rs. 200/- and passed a further order under section 630(2) to vacate the premises in his occupation .

5. Being aggrieved by the said order the revision applicant has come before this Court. The first contention raised on behalf of the revision applicant is that from the materials on record, it would be quite clear that the claim raised by the revision applicant that the real relationship between the revision applicant and the complainant company is that of a tenant and

landlord could not be said to be false. It is further contended that as the company had already resorted to a civil proceedings by filing a suit under section 13(1) of the Bombay Rent Act, present prosecution is not tenable in law in view of the decision of this court in the case of Prahladbhai Rajaram Mehta vs. Popatbhai Haribhai Patel & anor.³⁶(2) GLR 1752. Thus it is pointed out that the order of conviction and sentence passed against the applicant will have to be quashed and set aside and the applicant is entitled to get an order of acquittal. As against this the learned advocate for respondent no.2 vehemently urged before me that even in the civil proceedings, the civil court has found that the revision applicant was in occupation of the premises in lieu of his employment and therefore, the finding recorded by the learned Magistrate that the claim of the revision applicant that there is no relationship of landlord and tenant between him and the complainant is not tenable, is quite proper and correct. He contended that neither the provisions of section 630 nor the provisions of section 13 of the Bombay Rent Act make incumbent upon the respondent no.2-original complainant to choose either of the two forums. He thus contended that the order passed by the learned Magistrate deserves to be maintained and the present revision application is liable to be dismissed.

6. There is no dispute of the fact that present revision applicant was working as a peon with the complainant company. It is an admitted fact he retired on 31.3.86 on his attaining the age of superannuation. Thereafter notice was issued to the present revision applicant on 20.3.87 calling upon him to vacate the premises. Said notice was replied by reply dated 25.3.97 in which specific contention was raised by the revision applicant that he was in occupation of the premises as a tenant and not on account of his employment. Thereafter a suit bearing HRP Suit No. 2137/87 was filed in the Court of Small Causes, Ahmedabad on 26.4.87. It is an admitted fact that said suit was decreed on 24.4.96 and against the said judgment and decree an appeal has been preferred by the present revision applicant being civil appeal no. 98/96 and operation of the judgment and decree passed in HRP Suit No.. 2137/87 has been stayed. The controversy between the parties will have to be considered in view of the above stated admitted facts.

7. From the aforesaid facts, it would be quite clear that after the retirement of the present revision applicant on 31.3.89, he was called upon by a notice to vacate the premises and in reply to the same, the present

revision applicant has raised a contention that he was in occupation of the premises as a tenant and not in lieu of his employment with the complainant company. Now inspite of this specific defence raised by the present revision application , the complainant had only filed a civil suit on 24.4.86 and had not resorted to prosecution under section 630. Admittedly prosecution under section 603 was initiated by filing criminal case no. 48/89 on 16.1.89. It must be remembered that in a criminal prosecution, it is not incumbent upon the accused to prove that the contention raised by him is true and correct. What is expected of him is that if , from the material on record, it is not possible to hold that the defence version put up by the accused is a false one, then he is entitled to get benefit of doubt because in a criminal law as applicable in our country an accused is presumed to be innocent and the offshoot of the principle is that if a defence version is put up by the accused and then if the said version could not be said to be false, then he is entitled to benefit of doubt and when it is possible to hold that the version put up by him is false one, then he is liable to be convicted.

8. Now when the respondent no.2 had launched prosecution, respondent no.2 has not produced the document under which possession of the premises in question were given to the revision applicant. The revision applicant had raised a specific contention that he was paying the rent to the company and the HRA which was payable to him as per the settlement between him and the company and the union of the workmen, he was not getting the said HRA. Now when there was a contention raised by him, it was incumbent upon the company to produce on record to show as to under what terms of contract between the parties the revision applicant was allotted the premises in question. No doubt one Register was produced but it was of the year 1986 as could be seen from the evidence of the complainant as well as his witness. The conduct of the complainant in not lodging a prosecution immediately after getting reply to the notice that the revision applicant was raising a contention that the relationship between him and the complainant was that of landlord and tenant and resorting to filing of a civil suit for getting possession u/s 13(1(f) also makes very difficult to hold that the version put up by the applicant was false one. In the natural course of conduct, if at all the complainant was of the view that the version put up by the revision applicant in his difference was false one, then he would have lodged prosecution along with the filing of the suit. No doubt, merely because a civil suit is filed by him it could not

be said that the prosecution is false one and in my opinion, the conduct of the complainant in not resorting to the criminal prosecution for nearly two years after the filing of the civil suit, makes it very difficult to hold that the version put up by the revision applicant was false one. The revision applicant has produced certain receipts of the year 1981 for payment of certain amounts at the hearing of this application. According to the learned advocate for the applicant, the documents were produced by him during the trial of the suit in the under the Bombay Rent Act and according to him, said documents are towards the payment of rent of the premises in question. But as these documents were not produced in the original criminal trial, it would not be proper on my part to express any opinion regarding the same. But in my opinion, the fact that the complainant had not produced the documents of contract or the order under which the possession was given to the revision applicant and when the revision applicant had raised a specific contention that he was occupying the premises as a tenant and inspite of the said specific contention when the complainant had resorted to only filing of civil suit against the present revision applicant and has again approached the criminal court after two years of the filing of the said civil suit makes it very difficult for this court to hold that the version put up by the revision applicant is false one.

10. The learned advocate for the respondent-company submitted that the very fact that a suit under section 13(1)(f) has been decreed clearly shows that the version of the revision-applicant is false. Admittedly against said judgment and decree, an appeal has been preferred and said appeal has been admitted and is pending for hearing. Therefore, under the law the judgment of the Trial Court remains in abeyance. Now apart from this back ground, the question is as to whether the revision application was in occupation of the premises as a tenant or on account of his employment being a disputed question of fact and arising out of a civil dispute between the parties and therefore, the appropriate forum for deciding the said question would be a civil court and not a criminal court.

11. The learned single Judge of this court in the case of Pralhadbhai Rajaram Mehata(supra) has held that the landlord cannot have simultaneously both the reliefs arising under section 630 of the Act and civil suit for possession against the occupation of the premises. The submission made by the learned advocate for the respondent no.2 is that neither section 630 nor section

13 of the Bombay Rent Act makes it specifically clear that the owner of the premises must choose either of the two remedies. But in the instant case, what I am holding is this that the conduct of the owner of the premises in not initiating criminal prosecution, inspite of a specific contention is raised by the occupant that he was not in occupation of the premises on account of his employment and he is not resorting to criminal prosecution u/s 630 for nearly two years after the filing of the civil suit makes it doubtful for rejecting the claim of the revision applicant. Therefore, in view of the above discussion I hold that in view of the fact that there is no positive evidence on record to show that as under what circumstances the revision applicant entered into possession and what were the terms under which he got possession of the premises. Merely because the premises belongs to the landlord and that he was in enjoyment of the premises, it is very difficult to hold that an offence under section 630 is disclosed. Therefore, in the circumstances, in my opinion the learned magistrate was not justified in holding the revision applicant guilty of the offence under section 630 of the Companies in view of the materials on record.

12. Learned advocate for the respondent no.2 has also urged before me that as the landlord had filed a suit it is open for him to withdraw the said suit and filing of the said suit should not come in his way and the landlord may be directed to withdraw the suit and the order of conviction and sentence should not be set aside on account of the filing of the suit by him. No doubt the landlord has filed a suit and it is upto him whether to proceed with the said suit. The court cannot give any direction to him in this respect. I am not giving benefit of doubt to the applicant merely because of the filing of the said suit but filing of the said suit is one of the circumstances indicating the conduct of the landlord and that conduct could not be now washed out by withdrawing the suit at this stage. He has also submitted that the order of conviction and sentence should be maintained and only order of vacating possession should be made subject to the decision of the civil proceedings. But in my opinion, if I uphold the conviction, then necessary consequences thereof as contemplated under section 630 would follow. In my opinion, it would not be either just or proper to maintain the order of conviction and make an order of delivering possession subject to the discharge of the civil proceedings.

13. Thus in view of the above considerations I hold

that the learned magistrate ought to have given benefit of doubt to the revision applicant and he was not justified in holding him guilty for offence under section 630. I therefore, allow this revision application and set aside the order of conviction and sentence passed against the present revision applicant. Fine if any paid to be refunded to him. The above observation made by me is only for the purpose of deciding the criminal trial on the revision applicant and it is open for the civil court to come to its own conclusion on merits of the matter.

(S.D.Pandit.J)